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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,480	12/18/2001	Timothy David Warlick		9218

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TIM WARLICK  
2273 GRAHAM ROAD  
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EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 06/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/020,480

Applicant(s)

WARLICK, TIMOTHY DAVID

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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***Information Disclosure Statement***

1. The information disclosure statement filed December 18, 2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

***Claim Objections***

Claims 1-6 are objected to under M.P.E.P. 608.01(m). Each claim begins with a capital letter and ends with a period. Periods may not be used elsewhere in the claims except for abbreviations. See *Fressola v. Manbeck*, 36 USPQ2d 1211 (D.D.C. 1995).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 appears directed to a mold but does not recite any specific features of the mold for which applicant seeks protection. Claim 1 appears to recite only an intended product and

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presumed characteristics of an intended product. Otherwise, what is being defined by "...formed in such a manner"?

Claim 2, line 1 recites, "as formed by the mold in claim 1" when it is not clear as to what any mold of claim 1 includes nor how a ballast is formed by any such mold.

Claim 6, lines 2-3, it is not clear as to what, specifically, is being defined by "ballast that is produced without use of non-lead materials and requires only lead or high density metal"? Claim 6 appears to state that the claimed ballast is made from only lead while further reciting that the claimed ballast "requires only lead or high density material". It is not seen how the claimed ballast can be made from any material other than lead with the language of claim 6 reciting "produced without use of non-lead materials" or "requires only lead".

#### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

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(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Lord et al.

Lord et al. discloses a mold capable of forming through holes or slots within an article of manufacture.

6. Claims 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Selisky.

Selisky discloses a weight 10 formed of lead with any number of weight being utilized on a diving belt 23.

7. Claims 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Finnern.

Finnern discloses a weight 50 formed of lead with any number of weight being utilized on a diving belt 10.

8. Claims 2-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Walsh, Jr.

Walsh, Jr. discloses, Fig. 9, a "ballast" 22 formed with more than two belt receiving slots with any number of "ballasts" 22 being utilized on a belt 25.

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***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selisky in view of Walsh, Jr. Selisky discloses, Fig. 1, a weight 10 formed of lead with any number of weight being utilized on a diving belt 10 while Walsh, Jr. discloses, Fig. 9, a "ballast" or pad woven on a belting material and possessing more than two belt receiving slots so as to allow for a firm positioning of the "ballast" or pad upon the belting material. To have formed the Selisky weight with more than two belt receiving slots, thus assuring a firm positioning of the Selisky "ballast" upon the belting material 10, would have constituted an obvious expedient to one having ordinary skill in the art at the time the invention was made as taught by Walsh, Jr.

11. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finnern in view of Walsh, Jr. Finnern discloses, Fig. 2, a weight 50 formed of lead with any number of weight being utilized on a diving belt 10 while Walsh, Jr. discloses, Fig. 9, a "ballast" or pad woven on a belting material and possessing more than two belt receiving slots so as to allow for a firm positioning of the "ballast" or pad upon the belting material. To have formed the Finnern

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weight with more than two belt receiving slots, thus assuring a firm positioning of the Finnern "ballast" upon the belting material 10, would have constituted an obvious expedient to one having ordinary skill in the art at the time the invention was made as taught by Walsh, Jr.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (703) 308-2168.



**MICHAEL SAFAVI**  
**PRIMARY EXAMINER**  
**ART UNIT 3673**

M. Safavi  
June 2, 2003